

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge. In addition, the Appeals Board (Board) has also considered the July 18, 2003 deposition of Mary Troy, which was listed by both attorneys in their submission letters, but not included in the record as listed and considered by the Administrative Law Judge.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment on the date alleged?
- (2) What is the nature and extent of claimant's injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

Claimant alleged accidental injury on January 23, 2003, while allegedly lifting boxes of frozen french fries. Claimant testified she suffered a slip and fall, injuring her back. Claimant testified that she advised her coworkers of the injury, including Elleicia Reed, the shift supervisor, and Frank Muci, the co-manager. Both Ms. Reed and Mr. Muci testified, denying any knowledge of claimant's alleged accident on January 23, 2003.

As noted by the Administrative Law Judge, there were multiple versions of how claimant alleged she was injured while working for respondent which the Administrative Law Judge found affected the credibility of claimant's testimony. Adding to the credibility question is the fact that claimant suffered a prior workers' compensation injury to her low back, which led to an earlier settlement, which claimant denied.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ In this instance, the Administrative Law Judge found, and the Board agrees, that claimant has failed to prove that she suffered accidental injury on January 23, 2003, while working for respondent. Therefore, the determination by the Administrative Law Judge that all benefits should be denied is affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated January 26, 2004, should be, and is hereby, affirmed.

¹ K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

IT IS SO ORDERED.

Dated this ____ day of June 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Russell B. Cranmer, Attorney for Claimant
Robert J. Wonnell, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director